

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.622(b),)

Table of Allotments,)

Digital Television Broadcast Stations.)

(Kingston, New York))

MM Docket No. 00-121

RM-9674

MOTION TO STRIKE

WRNN-TV Associates Limited Partnership ("WRNN"), licensee of WRNN-TV (Channel 62), Kingston, New York, and petitioner in the above-captioned proceeding, by its attorneys, hereby moves to strike the June 4, 2001 pleading styled "Emergency Petition for Expedited Decision" ("Petition") filed by WKOB Communications, Inc. ("WKOB").

The alleged basis for filing the Petition is WKOB's recent declaration of bankruptcy. WKOB blames its financial failure on an "atmosphere of uncertainty" regarding the assignment of DTV Channel 48 to WRNN, which purportedly has impeded WKOB's ability to "attract new capital or a purchaser or a time broker for the station."¹ WKOB then asks the Commission to render a decision quickly to "accommodate" the licensee's bankruptcy proceedings. Despite the document's title, however, the WKOB Petition appears to be calculated to *delay* the Commission's consideration, and ultimate approval, of WRNN's proposal to substitute DTV Channel 48 for its currently assigned Channel 21 by injecting into this proceeding factually and

¹ Petition at 1. WKOB acquired its construction permit to operate on Channel 48 on a secondary basis through a Commission auction.

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legally irrelevant material – nine months after the close of the pleading cycle – concerning WKOB’s financial status. In view of the overwhelming public interest benefits that will accrue from grant of WRNN’s long-pending petition for rulemaking, and the fast-approaching deadline for constructing digital television stations, WRNN urges the Commission to reject WKOB’s Petition and, for reasons already well-documented on the record in this proceeding, issue an order allocating DTV Channel 48 for use by WRNN.

As shown in WRNN’s original petition for rulemaking (*filed more than three years ago*) and in its comments in this proceeding, it is undisputed that the proposed allotment will:

- . Fully comply with the Commission’s technical and legal requirements for the modification of DTV channels;
- . Reduce the overall level of unmasked interference to other protected services;
- . Completely eliminate a substantial amount of interference that would otherwise be suffered by noncommercial educational WLIW(TV), Garden City, New York;
- . Increase the number of people who would receive a new interference-free DTV service by at least *5.9 million*; and
- . Promote spectrum efficiency and encourage the prompt introduction of new 700 MHz services in the New York DMA by facilitating WRNN-DT’s ability to complete its transition to digital and, thereby, release its NTSC Channel 62 for other uses.²

Based on similar service improvements, in the recent case of WWAC-TV, Atlantic City, New Jersey, the Commission held that the station’s proposed DTV Channel change served the public

² See Reply of WRNN-TV Associates Limited Partnership, MM Docket No. 00-121 (Sept. 5, 2000) at 3-13 (“*WRNN-TV Reply*”).

interest since it “enables WWAC-DT to serve a much larger population and eliminates the potential for interference” to another protected station.³

Moreover, prompt resolution of this allotment proceeding is needed to enable WRNN to construct its DTV station by the Commission’s deadline, which is less than eleven months away. Given the lead time required to plan, design, finance and construct a new television facility, WRNN must finalize and execute construction contracts now in order for the station to be on the air on a timely basis. Consequently, a decision is needed to promote the launch of a new DTV service – one of the Commission’s most pressing current policy objectives.

Notwithstanding the title WKOB gives its pleading, consideration of the Petition could delay this result by involving the Commission in an untimely and unnecessary rehash of previous objections to WRNN’s proposal and the alleged difficulties confronted by WKOB’s owner. In addition to being unsupported and speculative, WKOB’s purported financial condition is immaterial to this proceeding. The facts show, and WKOB does not dispute, that: (1) WKOB-LP is licensed to operate on a secondary basis; (2) WKOB-LP’s construction permit for Channel 48, *on its face*, obligates the station to protect, and accept interference from, DTV stations; and (3) the Commission made clear to potential bidders that the secondary status of low power service would be enforced.⁴ WKOB also does not dispute that it has been denied Class A eligibility, has not offered a full-time program service since 1999 (despite repeated promises to the Commission that the station’s program schedule would be restored promptly), and, at last

³ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Atlantic City, New Jersey)*, MM Docket No. 01-49, DA 01-1260, at ¶ 2 (May 25, 2001).

⁴ *See WRNN-TV Reply* at 13-19.

count, was on the air no more than three to five hours per day.⁵ The initiation of bankruptcy proceedings does not – indeed cannot – change the nature or secondary status of WKOB’s authorization or otherwise alter the public interest calculus in this proceeding.⁶

The Commission has made clear, moreover, that it will not alter its rules to protect bidders, like WKOB, from the consequences of their own actions, because such an unwarranted result “would shift responsibility for imprudent business practices onto the government rather than on the bidder, where it belongs.”⁷ Indeed, the Commission “has long held that it cannot be a guarantor of financial success for its licensees.”⁸ The Commission simply should not acquiesce in WKOB’s implicit request to be insulated from the risks it assumed by investing in a secondary service.⁹

⁵ See *id.* at 17-18.

⁶ While the Commission may attempt to accommodate federal bankruptcy laws, the agency retains exclusive authority with respect to the licensing of broadcast stations. See *Tsooris Corporation (Assignor) and Talkline Broadcasting Corporation (Assignee) For Assignment of License of WLIR(AM), Spring Valley, New York*, 12 FCC Rcd 1675 (1997).

⁷ *Requests for Waivers in the First Auction of 594 Interactive Video and Data Service Licenses*, 9 FCC Rcd 6384, 6385 (1994).

⁸ *Forum Communications Company, WMCY(TV), Minot, North Dakota*, 15 FCC Rcd 14, 17 (1999) (denying relief to a licensee that had made overly optimistic predictions about the economy, and subsequently threatened to surrender its license due to financial costs, unless the Commission waived the main studio rule).

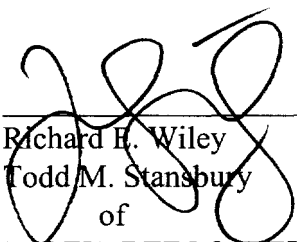
⁹ The courts have emphasized that “an FCC licensee takes its license *subject to the conditions imposed on its use*.... Acceptance of a license constitutes accession to all such conditions. A licensee may not accept only the benefits of the license while rejecting the corresponding obligations.” *P & R Temmer v. FCC*, 743 F.2d 918, 928 (D.C. Cir. 1984) (emphasis added).

Accordingly, the Commission should reject WKOB's untimely and irrelevant Petition, complete its review of the allotment proposal based on the record previously established, and promptly modify WRNN's DTV allotment to Channel 48.

Respectfully submitted,

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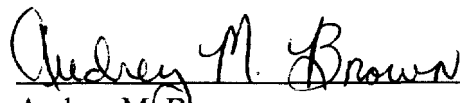
June 6, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2001, I caused copies of the foregoing Motion To Strike of WRNN-TV Associates Limited Partnership to be delivered via first-class postage prepaid mail to the following:

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